

Case for the damnation of Marsden

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The solicitor was hardly the civic hero his eulogisers make out, writes Paul Sheehan.

AFTER they abducted Anita Cobby on a summer night in February 1986, the five men pummelled her straight away, then raped her, bugged her, broke her fingers. Then they smashed her again and raped her again, all of them - John Travers, Michael Murdoch, Les Murphy, Gary Murphy and Mick Murphy. And after they tortured her, and gave a third rounds of rapes, Travers sat on her back, pulled her head up by the hair, and slit her throat so she would never talk.

Travers talked, and so they were soon caught and put away forever, but not before the five had left a trail of violence for years and years, and more than 50 convictions registered. Only a monstrous crime and a big mouth stopped the cycle. Anita Cobby, a 26-year-old nurse, was a martyr to a legal system loaded in favour of the guilty and the wealthy.

Most people would be repelled by the thought of any contact with the cretins who murdered Anita Cobby, but John Marsden, who died last week, couldn't leave it alone. He was a frequent visitor. A man with an endless capacity for bragging about having rough sex with rough men, he gravitated into a friendship with the Murphy boys. Inevitably, during his long and soiling defamation action against Channel Seven, Marsden's relationship with Les Murphy, the most pathologically violent of the brothers, came back to bite him. It was alleged in court that Murphy had threatened a fellow prisoner who was going to testify against Marsden, causing the witness to withdraw.

Marsden denied this, but anyone familiar with Justice David Levine's seven-volume judgement would see that Marsden's credibility was the greatest casualty in Australia's longest defamation trial, even though Marsden won the case.

Levine was troubled by Marsden as a witness. He found that "on the balance of probabilities" Marsden induced a murderer and rapist to persuade a witness "to change his position". Further, the judge found Marsden had "probably" used the services of two witnesses to have another witness "reconsider his position".

That Marsden appeared to have employed criminals to intimidate witnesses against him was the most sordid subtext to emerge in a trial full of sordid subtext. Marsden won his defamation case because, although he liked rough trade, and although he was reckless, he could deny he was a pederast, which is criminal offence. The multimillion-dollar mistake made by Channel Seven's Peter Manning was to call Marsden a pederast, a highly specific claim, and think that rent boys could survive a forensic battering in court.

Besides, whenever things got hot for Marsden, he and his supporters in the lavender mafia would raise the cry of homophobia, a cynical debasement of gay rights. When it came to hypocrisy, Marsden saved his worst till last. After a Deputy Senior Crown Prosecutor, Margaret Cunneen, suggested that some criminal defence lawyers used deceit, deception, dissembling and delay on behalf of clients, Marsden tried to damage her career.

"Perhaps it is time for us to consider whether public confidence in the courts is now being eroded by the perception that the pendulum has swung rather too far in the direction of the protection of the rights of the accused person," Cunneen said in delivering the 2005 Sir Ninian Stephen lecture.

"There seems to be a fashion, among some in the criminal justice system, for a kind of misplaced altruism, that it is somehow a noble thing to assist a criminal to evade conviction ... Justice is not achieved by ambush, trickery, dragging proceedings out in a war of attrition with witnesses."

Cunneen had seen, many times, justice denied by arid technicality and outright lying in court. In response, none frothed more than Marsden, who lodged formal complaints with the Legal Services Commissioner, and the Bar Association, and the Director of Public Prosecutions. He called her "a disgrace to our profession" and demanded Cunneen be stood down during the investigation of his complaint.

Of all the lawyers who should shut up about bringing "disgrace to our profession" it was Marsden. Given the sanitising, laudatory comments made in recent days by the Premier, Morris Iemma, the president of the NSW Law Society, June McPhie, and the head of the NSW Council for Civil Liberties, Cameron Murphy, portraying Marsden as a civic hero, let the record show that Marsden was a serial liar, a proven perjurer, a flagrant illegal drug-user and drug provider, a professional who had sex with his own clients, a wealthy man who boasted about sodomising young men he picked up on the streets, a standover man who was vexatious and constantly at war, a bully who used the law as a weapon.

Marsden lived with blood on his hands. He died with a guilty conscience. This might or might not explain his rage when a Crown prosecutor said defence lawyers could be sleazy. It was Marsden who got Ivan Milat off a rape charge in the 1970s, using the legal system's medieval treatment of rape victims to leave Milat free to resume his favoured pastime. At least seven people would die before Milat was finally caught.

Marsden's excesses were well known - thanks mostly to Marsden himself. He was a man honoured, embraced, protected and promoted by the legal profession. He also exploited his friendship with John Fahey when Fahey was premier. Marsden became president of the Law Society of NSW, he was appointed to the Legal Aid Review Committee, the Justice Act Review Committee, the NSW Police Board and the Anti-Discrimination Board of NSW. And when his memorial service is conducted this week, he has requested that one of the eulogies be delivered by his friend and confidant, Justice Michael Kirby of the High Court of Australia.

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